Supreme Court, U.S.
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No. 99-229

In The

Supreme Court of the United States

MAURICE G. WOODS and TERESA J. WOODS,

Petitioners,

v.

THOMAS J. KENAN, Trustee,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Tenth Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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The Petitioners (the "Woods") have given no compelling reasons for this Court to grant their petition for a writ of certiorari.

A. There are no conflicts in decisions of U.S. courts of appeals.

Petitioners cite no conflicts in decisions of U.S. courts of appeals. They refer to the Tenth Circuit's description of three different approaches taken by bankruptcy courts and bankruptcy appellate panels to the issue of whether and under what circumstances a technical abandonment of property is revocable in a bankruptcy case. Bankruptcy appellate panels are not U.S. courts of appeals. Rule 10(a) of the Supreme Court Rules refers to conflicts in decisions between U.S. courts of appeals.

B. The decision of the Court of Appeals does not conflict with any relevant decision of this Court.

They cite no relevant decisions of this Court with which the decision of the Court of Appeals, Tenth Circuit is in conflict.

Of the nine cited cases of this Court, seven are cited for the rule concerning the interpretation of statutes known as the "plain meaning doctrine." Petition, pages 8 and 9. They argue that the Tenth Circuit failed to apply this rule, not that it changed the rule.

An eighth cited decision of this Court, *Taylor v. Freeland & Kronz*, 503 U.S. 638, 112 S.Ct. 1644 (1992) is said to

be a "relevant decision" with which the decision of the Court of Appeals, Tenth Circuit is in conflict. But *Taylor* involved an interpretation of 11 U.S.C. §521(1) and Bankruptcy Rule 4003(b) as they apply to exempt property. The case at hand involves the inadvertent closing of a chapter 11 case, the reopening of the case pursuant to 11 U.S.C. §350(b), the vacation of the earlier order closing the case pursuant to Fed. R. Bankr. P. 9024 and Fed. R. Civ. P. 60(b), and the effects of this on property technically abandoned to the debtors under 11 U.S.C. §554(c). *Taylor* is not a relevant decision of this Court for purposes of a petition for a writ of certiorari. It is only an application of the "plain meaning doctrine" in a bankruptcy case context.

The ninth cited decision of this Court, *Norwest Bank Worthington v. Ahlers*, 485 U.S. 197, 108 S.Ct. 963 (1988) is cited for the proposition that "whatever equitable powers remain with the bankruptcy courts must be exercised within the confines of the Bankruptcy Code." Petition at 14. Petitioners then argue that Fed. R. Civ. P. 60(b)(1) – which was relied upon by the Court of Appeals, Tenth Circuit as justification for the bankruptcy court's vacating its earlier order closing the case – is "inherently equitable in nature" and, as such, cannot be available to circumvent the specific legislative directive in 11 U.S.C. §554(c).

Ahlers is not a relevant decision that conflicts with the decision of the Court of Appeals, Tenth Circuit. *Ahlers* held that the "absolute priority rule," 11 U.S.C. §1129(b)(2)(B)(ii), itself provides that a "fair and equitable" reorganization plan is one that complies with the absolute priority rule. 485 U.S. at 207, 108 S.Ct. at 969. In *Ahlers*, indeed, this Court reached out to rationalize the

absolute priority rule with 11 U.S.C. §1126, which provides that it is up to the creditors – and not the courts – to accept or reject a reorganization plan that fails to provide them adequate protection or fails to honor the absolute priority rule. *Id.* at 485 U.S. 207, 108 S.Ct. 969.

The essential difficulty the Petitioners have had in this case is their myopic focus on 11 U.S.C. §554(c) and a refusal to interpret it in conjunction with other provisions of the Bankruptcy Code and the Federal Rules of Civil Procedure.

C. The Court of Appeals has not decided an important question of federal law that has not been, but should be, settled by this Court.

This case does not involve a decision of a U.S. court of appeals on an important question of federal law that has not been, but should be, settled by this Court. In fact, the Petitioners make no argument to this effect. They state no high public interest in this Court's settling whether a bankruptcy case can be reopened for reasons involving neglect and inadvertence by both the bankruptcy court and the trustee. They just state the proposition and let it go at that. Petition, page 1.

D. The Petitioners only assert that the Court of Appeals misapplied a properly stated rule of law.

The only reasons urged by the Petitioners for the granting of a writ of certiorari are their assertions that the Court of Appeals, Tenth Circuit *misapplied* a rule of statutory interpretation – the "plain meaning doctrine" – and

misapplied the rule that limits a bankruptcy court's exercise of equitable powers within the confines of the Bankruptcy Code. Even if correct, those are not compelling reasons for this Court to review the decision of the Court of Appeals, Tenth Circuit. No conflict in decisions of the courts of appeals would be resolved. No confusion or uncertainty would be eliminated concerning an important federal question caused by a U.S. court of appeals decision that conflicts with relevant decisions of this Court. No important, unsettled question of federal law would be settled. If the arguments of the Petitioners are to be believed, the Court of Appeals, Tenth Circuit just misapplied accepted law.

The Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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